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May 16, 2001

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FEDERAL COMMUNICATIONS COMMISSION
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Hand Delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 01-88/ Application of Southwestern Bell Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide InterLATA Services in Missouri

Dear Ms. Salas:

Enclosed are the reply comments of WorldCom, Inc. in the above-captioned section 271 application of SBC for the state of Missouri. Please call me with any questions.

Sincerely,

Keith Seat

Keith L. Seat

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by SBC Communications, Inc.	)	
for Authorization to Provide In-Region,	)	CC Docket No. 01-88
InterLATA Services in Missouri	)	
	)	

REPLY COMMENTS OF WORLDCOM, INC. ON THE APPLICATION BY SBC COMMUNICATIONS INC. FOR AUTHORIZATION TO PROVIDE IN-REGION, INTERLATA SERVICES IN MISSOURI

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May 16, 2001

INTRODUCTION AND EXECUTIVE SUMMARY

While other section 271 applications have tended to improve during the ninety day review period under the Commission's spotlight, SBC's Missouri application has only gotten worse. It has become even clearer in recent weeks that SBC cannot be trusted to self-certify its compliance with section 271 requirements, for SBC has admitted to falsehoods in its sworn affidavits on which this Commission expressly relied in granting SBC's section 271 application for the neighboring states of Kansas and Oklahoma earlier this year. SBC's conduct clearly illustrates why the Telecommunications Act does not allow Bell Companies to merely rely on self-serving statements asserting compliance with the Act. The Commission should adhere to its earlier precedent requiring section 271 applicants to show through commercial experience or independent third-party testing that their Operations Support Systems ("OSS") works as advertised.

After competitors repeatedly brought up the issue over many months, SBC finally admitted last month that it submitted materially false testimony to the Commission concerning its OSS in order to rebut competitor charges that SBC was in clear violation of Commission orders and the section 271 competitive checklist. Now that it is abundantly clear that self-certification and BOC-hired auditors cannot be relied on to provide checklist compliance, SBC's application should be denied. SBC has failed to demonstrate that its OSS is sufficient since there was no third party test in Missouri, there is no track record of significant commercial usage of SBC's OSS for residential service in the state, and SBC has not proven that its OSS is identical to that in Texas. Actual marketplace experience at significant residential volumes is needed, but is prevented by the high unbundled network element ("UNE") rates in the state.

The issues of SBC's veracity are in addition to the serious concerns about network element pricing that were discussed in WorldCom's opening comments, and that the Department of Justice appropriately emphasized in its formal evaluation on May 9. Instead of refiling with corrected UNE rates in Missouri, SBC merely plays games with the numbers by comparing the lowest switching rates in Missouri with the second lowest rates in Texas, on the flimsy basis that apparently cities in Missouri aren't big enough to have efficient switching. The data for Missouri show that Missouri has about the same percentage of host and stand alone switches as Texas, but slightly fewer lines served by each switch. The Commission's Synthesis Model indicates that these two effects make Missouri's switching costs very similar to Kansas and slightly higher than Texas, but SBC's switching rate for CLECs in Missouri is 50% higher than it should be.

SBC continues to push the Commission to approve UNE prices which are too high for loops as well. As explained in WorldCom's opening comments, based on the Commission's own cost analysis, loops remain almost 25% higher in Missouri than they should be when compared to Texas and Kansas. While the Missouri commission acknowledges that there are errors in SBC's rates, SBC still has not submitted all the cost studies on which its rates are based in Missouri so that those and other costing errors can be quantified and corrected.

The Bell Operating Companies ("BOCs") quite naturally seek to loosen the section 271 requirements with each successive application, but the Telecommunications Act sets forth critical standards that must be carefully applied in order for local residential competition to have the best possibility of success. Granting this application would undermine the possibility of local competition throughout the country by significantly lowering the applicant's burden of showing that rates are cost-based, as well as permit many additional errors to be explicitly tolerated in section 271 applications. The Commission must hold the line and deny this application until SBC demonstrates proper cost-based UNE rates and conducts an adequate third party test of the uniformity of its OSS in Missouri and Texas and thorough testing of any differences identified, as well as testing of any functionalities which have an inadequate commercial track record in Texas or Missouri.

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FCC Orders	
Kansas-Oklahoma Order	In re Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29 (rel. Jan. 22, 2001), petition for review filed, Sprint Communications Co. v. FCC, No. 01-1076 (D.C. Cir. filed Feb. 16, 2001).
Massachusetts Order	In re Application of Verizon New England Inc., Bell Atlantic Communications Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d//b/a Verizon Enterprise Solutions), And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts, CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130 (rel. April 16, 2001), petition for review, WorldCom, Inc. v. FCC, No. 00-1198 (D.C. Cir. filed Apr. 25, 2001).
DOJ Evaluation	
DOJ Eval.	In re Application of SBC Communications Inc., for Authorization to Provide In-Region, InterLATA Services in Missouri, CC Docket No. 01-88, Evaluation of the Department of Justice (filed May 9, 2001).

Comments and Affidavits	
Frentrup Decl.	Declaration of Chris Frentrup on Behalf of WorldCom (Tab A attached to Initial Comments of WorldCom, Inc.).
KS-OK Comments of IP Communications	Comments of IP Communications, In re Application of SBC Communications, Inc. for Authorization to Provide In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217 (filed Nov. 15, 2000).
KS-OK Comments of WorldCom, Inc.	Comments of WorldCom, Inc., In re Application of SBC Communications, Inc. for Authorization to Provide In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217 (filed Nov. 15, 2000).
KS-OK Reply Comments of WorldCom, Inc.	Reply Comments of WorldCom, Inc., In re Application of SBC Communications, Inc. for Authorization to Provide In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217 (filed Dec. 11, 2000).
KS-OK Reply Aff. Chapman	Reply Affidavit of Carol A. Chapman on Behalf of SBC (Tab 2 to Reply Comments of SBC, In re Application of SBC Communications, Inc. for Authorization to Provide In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217 (filed Dec. 11, 2000).
KS-OK Reply Aff. Cullen	Reply Affidavit of Angela M. Cullen on Behalf of SBC (Tab 4 to Reply Comments of SBC, In re Application of SBC Communications, Inc. for Authorization to Provide In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217 (filed Dec. 11, 2000).
KS-OK Reply Aff. Welch	Reply Affidavit of Mark J. Welch on Behalf of SBC (Tab 17 to Reply Comments of SBC, In re Application of SBC Communications, Inc. for Authorization to Provide In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217 (filed Dec. 11, 2000).

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REPLY COMMENTS OF WORLDCOM, INC. ON THE APPLICATION BY SBC COMMUNICATIONS INC. FOR AUTHORIZATION TO PROVIDE IN-REGION, INTERLATA SERVICES IN MISSOURI

In addition to the critical pricing concerns that were the focus of WorldCom's opening comments and are highlighted in the Department of Justice's ("DOJ's") Evaluation, SBC's newly admitted false statements in its sworn affidavits in its last section 271 application raise grave concerns about the veracity of any information from SBC that is not independently verified by a third party. As discussed below, this concern extends beyond the particular factual situation of the misrepresentations, and raises doubts about SBC's OSS in general since there is neither sufficient commercial experience nor a valid third party test in Missouri.

I. SBC'S SELF-CERTIFICATION OF CHECKLIST COMPLIANCE IS NOT A SUFFICIENT BASIS FOR GRANTING ITS APPLICATION

In this application, SBC again seeks to rely on the same type of self-certification of compliance with the competitive checklist that SBC now admits was false in its sworn affidavits in the recent section 271 application in Kansas and Oklahoma. The Commission should make clear that it will not rely on SBC self-certification as the basis for granting a section 271 application and should deny this application or encourage SBC to withdraw it until there is proof from commercial experience or a reliable third party test that all aspects of SBC's OSS in Missouri are adequate.[1]

WorldCom has frequently emphasized the importance of commercial experience and third party testing to ensure that competition has a chance to succeed, and rejected reliance on a BOC's longstanding auditor to approve the performance of its client's OSS, much less relying on the BOC's word for it.[2] It should surprise no one that the SBC-generated Ernst & Young audit submitted as part of SBC's previous application failed to uncover SBC's problems relating to the capabilities and performance of its OSS. Ernst & Young did not observe – much less test – SBC's loop qualification processes that were in issue there, although after the misrepresentations came out, SBC scrambled to provide a post-application ex parte in this proceeding in which Ernst & Young asserts that the loop qualification issues have been resolved in Missouri. SBC's false affidavits in the Kansas-Oklahoma proceeding vividly illustrate why the Commission should adhere to its earlier precedent requiring section 271 applicants to show through commercial experience or independent third-party testing that their OSS work as required.

SBC's false statements in its previous section 271 application arose in the context of concerns by a number of competitive local exchange carriers ("CLECs") about access to loop

[1] DOJ notes in its Evaluation that residential competition using UNEs is "almost nonexistent" (DOJ Eval. at 2). DOJ also states that the lack of "significant improvement" on OSS issues that were not adequate in previous applications should receive the Commission's attention here (DOJ Eval. at 7 n.23).

[2] See WorldCom Initial Comments at 13-15. See also KS-OK Comments of WorldCom, Inc., at 3-7; KS-OK Reply Comments of WorldCom, Inc., at x ("This Commission has always demanded proof that a BOC's OSS is ready, not just an assertion to that effect by the applicant"); id. at 37 & n.24 (noting the absence of commercial experience and the "complete lack of testing of line sharing").

qualification or loop make-up information from SBC. CLECs specifically asserted that the affidavits SBC submitted in support of its section 271 application were inaccurate as to SBC's loop qualification capabilities and practices, and made very clear the importance of the issue to the section 271 application.[3] In response to arguments that SBC's initial affidavits supporting its section 271 application were inaccurate, SBC submitted three additional affidavits on reply, asserting CLEC misstatement of the facts. See KS-OK Reply Aff. Chapman; KS-OK Reply Aff. Welch; KS-OK Reply Aff. Cullen.

In the absence of a third-party test, the Commission was forced to resolve conflicting allegations of fact as to SBC's OSS and the competitive impact of SBC's alleged practices. The Commission chose to accept SBC's version of the facts. Kansas-Oklahoma Order ¶ 123 & n.334 (citing and relying on SBC witnesses Chapman and Welch Reply Affidavits). However, SBC acknowledged in its April 13 ex parte letter that the three reply affidavits it submitted to rebut CLEC allegations were false, and that the Commission relied on this false testimony. See SBC April 13 Letter at 1-2 (acknowledging that the affidavits were "inaccurate" and that the FCC responded to concerns "based on" the information in SBC's reply affidavits).

SBC's falsehoods raise issues in this Missouri application, where SBC relies on its unilateral assertions that its OSS is adequate and on its longstanding auditor, Ernst & Young, just as it did in Kansas-Oklahoma. Concern over BOC self-certification is not merely an abstract notion or a matter of theory. As experience is being gained about problems that follow section

[3] Letter from Howard J. Siegel, Vice President of Regulatory Policy, IP Communications Corp., to Magalie Roman

271 authorization in a state, it is becoming clear that problems tend to emerge in the very areas in which the BOC was able to self-certify that no problem existed or that a fix has been made in the absence of third party verification or retesting. For example, in the months following section 271 authorization in New York, Verizon's systems were unable to provide the necessary notification to competitors about the provisioning status of tens of thousands of customers, which caused significant harm and resulted in Verizon paying fines of millions of dollars. This problem occurred in the very area that Verizon represented was resolved but was not retested by the third party tester.[4]

Furthermore, concerns about SBC's veracity must be taken extremely seriously, because in the short period permitted for review of a section 271 application, the Commission, the Department of Justice, state commissions and interested parties must be able to count on the accuracy of the BOC's sworn statements in support of its application.[5] The Commission should not grant SBC's section 271 application for Missouri or other states until it receives third-party verification or substantial commercial evidence that SBC is currently complying with all of its checklist obligations. At a minimum, there must be third party testing if there is insufficient commercial experience with any particular functionality, including line splitting, in Missouri or

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Salas, Secretary, FCC, CC Docket No. 00-217 (Nov. 30, 2000).

[4] See, e.g., KPMG Exception Closure Report for ID 29 in the New York Public Service Commission section 271 proceeding at www.dps.state.ny.us/x29z.pdf (NYPSC Docket No. 97-C-0271, May 26, 1999) (in evaluating whether Verizon had corrected the problem in New York causing its systems not to return completion notifications on all orders placed during testing, KPMG, the third party tester, did not perform follow-up transaction testing but merely relied on Verizon's explanations as to why KPMG did not receive such notifications).

[5] The Arkansas Public Service Commission has directed SBC to file a detailed explanation and accounting regarding the inaccurate information SBC filed in the FCC's Kansas-Oklahoma section 271 proceedings; to identify any inaccurate information filed in the Arkansas 271 section proceeding; and to provide any documentation relating to this matter in the Arkansas proceeding.

Texas.

II. SBC HAS NOT MET ITS BURDEN OF PROVING THAT IT HAS SATISFIED CHECKLIST PRICING REQUIREMENTS

As emphasized by the Department of Justice and the Missouri Office of Public Counsel, pricing of unbundled network elements is of great concern in Missouri. DOJ's Evaluation is especially significant, not only because it is statutorily entitled to "substantial weight" from the Commission, but because it devotes the bulk of its comments to setting out the problems with SBC's rates with great clarity and detail. See DOJ Eval. at 7-19. SBC, on the other hand, would have the Commission approve its application even though switching rates, based exclusively on lower growth discounts, are about 50% higher than they should be, and loop rates are higher than in any state ever approved under section 271. The Commission should reject this application because SBC's rates in Missouri are out of line with the rates in its other jurisdictions with similar cost structures; because SBC has not submitted all its cost models and their associated inputs; and because the methodology used by the Missouri PSC is not TELRIC-based. Rather than addressing any of these important pricing concerns, SBC merely tries to fudge the numbers by comparing the largest cities in Missouri to the suburban parts of Texas in order to improve the appearance of the switching price comparisons.

Switching Rates Comparison. As WorldCom demonstrated in its initial comments, Missouri switching rates are excessive when compared to switching rates in the other states for which SBC has received section 271 approval. Frentrup Decl. ¶ 7. Furthermore, these rate differences are inconsistent with the cost differences that are found in the Commission's

Synthesis Model ("SM"). The cost differences cannot be explained by any differences in the number of lines per switch or in the mix of remote, host, and stand-alone switches in the SBC states.

As the Commission noted in the Massachusetts Order (¶ 24), the chief drivers of switching costs are the number of lines per switch and the mix of switch types in the ILECs' networks. If a switch serves more lines, the portion of the fixed cost of the switch that must be recovered from each line declines, thus lowering switching costs. In addition, the Commission has found that the fixed cost of a remote switch is lower than the fixed cost of a host or stand-alone switch. Thus, the more remote switches used by a company, the lower its switching costs should be.

In the case of SBC's states, Missouri and Texas have a very similar mix of switch types – Texas has 58% host and stand-alone switches, while Missouri has 53%. Kansas and Oklahoma, by contrast, have 31% and 25% host and stand-alone switches. These facts would suggest that Missouri and Texas should have similar costs, while Kansas and Oklahoma should have somewhat lower costs. However, the number of lines served per switch in each of these states points to the opposite conclusion. Texas has over 23,000 lines per switch, Missouri has over 15,000, and Kansas and Oklahoma each have about 10,000 lines per switch. These facts suggest that Kansas' and Oklahoma's switching costs should be higher, Missouri's in the middle, and Texas would have lower costs. In fact, as discussed in our initial comments (Frentrup Decl. ¶ 9), the SM yields fairly similar costs for each of these states, indicating that these factors offset each other. Given all these facts, it is disingenuous for SBC to claim its switching rates in Missouri are reasonable by comparing the lowest switching rates in Missouri with the second lowest rates in Texas. It is clear that Missouri has an average switching usage rate that is about 50% above the rates in Texas and Kansas, when the costs from the SM for Missouri and Kansas are very similar and only about 20% above the cost in Texas. Frentrup Decl. ¶ 9. The switching rates in Missouri are not based on TELRIC, for the reasons explained in our opening comments, and thus SBC's section 271 application for Missouri must be rejected.

Excessive Operating Costs. The common cost factor used in setting SBC's rates in Missouri is overstated, as AT&T correctly notes in its opening comments. First, the 16.47% factor is based on SBC's historic costs, prior to the 1996 Telecommunications Act. Use of this historic factor ignores several factors that would be expected to reduce these costs. First, there are the synergies from the several mergers that SBC has completed since that date. Next, there is SBC's incentive under price cap regulations to lower its costs to increase profits. Finally, if the Telecommunications Act truly does succeed in bringing competition to SBC's local markets, SBC will need to reduce its costs to compete more vigorously. All of these factors suggest that the common cost factor should be reduced substantially.

In addition to these reasons for a decline in the common cost factor, the factor itself is misapplied in Missouri. The factor is computed by taking the ratio of SBC's common expenses to its total expenses less common expenses. The factor is then applied to costs that include a return on investment. This methodology clearly overstates common costs, because the factor is applied to a type of expense (return on investment) that was not included in the development of the factor. In addition to the corrections to the factor itself discussed above, the factor either needs to be adjusted to include the return on investment, or should be applied only to expenses that do not include the return on investment. Until these adjustments are made, the common costs included in SBC's UNE rates in Missouri are further overstated, which affects the UNE rates for both loops and switching.

These factors, along with the other specific concerns set forth in WorldCom's initial comments and DOJ's Evaluation, including problematic non-recurring charges and lack of support for interim rates, lead to the position compellingly stated by DOJ that "the Missouri rates may fall outside the range that the reasonable application of TELRIC principles would produce." DOJ Eval. at 9, 12, 18-19.

CONCLUSION

SBC's Missouri application should be denied.

Respectfully submitted,

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May 16, 2001

Certificate of Service

I, Keith L. Seat, do hereby certify that copies of the foregoing Reply Comment of WorldCom were sent via first class mail postage paid, or hand delivered, as indicated, to the following on this 16th day of May, 2001.

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